United Nations S/AC.49/2009/17

Security Council

Distr.: General
4 August 2009

Original: English

Security Council Committee established pursuant to resolution 1718 (2006)

Note verbale dated 28 July 2009 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006) and has the honour to refer to the provisions of Security Council resolution 1874 (2009).

The Permanent Mission of Australia has the honour to provide the Chairman, pursuant to paragraph 22 of resolution 1874 (2009), with a report on the steps taken by Australia to implement paragraph 8 of resolution 1718 (2006) as well as paragraphs 9 and 10 of resolution 1874 (2009) and the financial measures set out in paragraphs 18, 19 and 20 of resolution 1874 (2009) (see annex).

09-45346 (E) 200809

Please recycle

Annex to the note verbale dated 28 July 2009 from the Permanent Representative of Australia to the United Nations addressed to the Chairman of the Committee

Report of Australia to the Security Council pursuant to paragraph 22 of Security Council resolution 1874 (2009)

In paragraph 22 of resolution 1874 (2009), adopted on 12 June 2009 by the Security Council,

> *Calls upon* all Member States to report to the Security Council within forty-five days of the adoption of this resolution and thereafter upon request by the Committee on concrete measures they have taken in order to implement effectively the provisions of paragraph 8 of resolution 1718 (2006) as well as paragraphs 9 and 10 of this resolution, as well as financial measures set out in paragraphs 18, 19 and 20 of the present resolution.

The present report describes the steps taken by Australia to implement those paragraphs.

Paragraph 8 of resolution 1718 (2006) and paragraphs 9 and 10 of resolution 1874 (2009)

Paragraph 8 (a), (b), (c) and (d) of resolution 1718 (2006) are implemented in Australia in the Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Regulations 2008 (Democratic People's Republic of Korea Regulations). Amendments to bring the Democratic People's Republic of Korea Regulations into line with the provisions of paragraphs 9 and 10, inter alia, of resolution 1874 (2009) were made by the Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Amendment Regulations 2009 (No. 1), which came into effect on 11 July 2009.

Paragraph 8 (a) of resolution 1718 (2006)

> (a) All Member States shall prevent the direct or indirect supply, sale or transfer to the Democratic People's Republic of Korea, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories, of:
>
> > (i) Any battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register on Conventional Arms, or related materiel including spare parts, or items as determined by the Security Council or the Committee established by paragraph 12 below (the Committee);
> >
> > (ii) All items, materials, equipment, goods and technology as set out in the lists in documents S/2006/814 and S/2006/815, unless within fourteen days of the adoption of the present resolution the Committee has amended or completed their provisions also taking into account the list in document S/2006/816, as well as other items, materials, equipment, goods and technology, determined by the Security Council or the Committee, which could contribute to the Democratic People's Republic

of Korea's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes;

(iii) Luxury goods.

As amended by paragraph 10 of resolution 1874 (2009)

Decides that the measures in paragraph 8 (a) of resolution 1718 (2006) shall also apply to all arms and related materiel, as well as to financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms, except for small arms and light weapons and their related materiel, and calls upon States to exercise vigilance over the direct or indirect supply, sale or transfer to the Democratic People's Republic of Korea of small arms or light weapons, and further decides that States shall notify the Committee at least five days prior to selling, supplying or transferring small arms or light weapons to the Democratic People's Republic of Korea.

The provisions of paragraph 8 (a) of resolution 1718 (2006) and paragraph 10 of resolution 1874 (2009), as they relate to the supply to the Democratic People's Republic of Korea of goods, are implemented in Australia by regulations 9 and 14B of the Democratic People's Republic of Korea Regulations.

Regulation 9 of the Democratic People's Republic of Korea Regulations prohibits the supply to the Democratic People's Republic of Korea of arms and related materiel without a permit issued by the Minister for Foreign Affairs under regulation 14B, or validly issued under the law of another country in compliance with its obligations under resolutions 1718 (2006) and 1874 (2009). Regulation 14B of the Democratic People's Republic of Korea Regulations only allows the Minister for Foreign Affairs to issue a permit for the supply to the Democratic People's Republic of Korea of small arms or light weapons. The Minister must not grant a permit unless the Minister has notified the Committee established by paragraph 12 of resolution 1718 (2006) (the Committee) and five working days have passed since the notification and the Committee has not advised against granting the permit to the applicant.

Regulation 9 of the Democratic People's Republic of Korea Regulations prohibits outright the supply of the following goods to the Democratic People's Republic of Korea from Australia, or by an Australian, or using an Australian flagged vessel or flag aircraft:

(a) Goods that are mentioned in documents S/2006/814, S/2006/815, S/2006/853, S/2009/205, INFCIRC/254/Rev.9/Part 1a, INFCIRC/254/Rev.7/Part 2a;

(b) Goods that have been determined by the Security Council or the Committee pursuant to subparagraphs 8 (a) (i) and (ii) of resolution 1718 (2006); and

(c) Goods that have been listed as luxury goods by the Minister for Foreign Affairs by legislative instrument. Regulation 5 of the Democratic People's Republic of Korea Regulations prohibits the provision of luxury goods mentioned in the luxury goods list. The Minister for Foreign Affairs under the Charter of the United Nations (Sanctions — Democratic People's Republic of Korea) Luxury Goods List 2008 has specified 27 categories of goods to be luxury goods.

Paragraph 8 (b) of resolution 1718 (2006)

> The Democratic People's Republic of Korea shall cease the export of all items covered in subparagraphs (a) (i) and (a) (ii) above and that all Member States shall prohibit the procurement of such items from the Democratic People's Republic of Korea by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the Democratic People's Republic of Korea.

As amended by paragraph 9 of resolution 1874 (2009)

> *Decides* that the measures in paragraph 8 (b) of resolution 1718 (2006) shall also apply to all arms and related materiel, as well as to financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms or materiel.

The provisions of paragraph 8 (b) of resolution 1718 (2006) and paragraph 9 of resolution 1874 (2009), as they relate to the procurement from the Democratic People's Republic of Korea of goods, are implemented in Australia by regulation 10 of the Democratic People's Republic of Korea Regulations.

Regulation 10 of the Democratic People's Republic of Korea Regulations prohibits outright a person from procuring the following goods from the Democratic People's Republic of Korea or from any person or entity in the Democratic People's Republic of Korea:

(a) Arms and related materiel;

(b) Goods listed in documents S/2006/814, S/2006/815, S/2006/853, S/2009/205, INFCIRC/254/Rev.9/Part 1a and INFCIRC/254/Rev.7/Part 2a; and

(c) Any goods determined by the Security Council or the Committee for paragraphs 8 (l) (i) and (ii) of resolution 1718 (2006).

Paragraph 8 (c) of resolution 1718 (2006) as supplemented by paragraphs 9 and 10 of resolution 1874 (2009)

> All Member States shall prevent any transfers to the Democratic People's Republic of Korea by their nationals or from their territories, or from the Democratic People's Republic of Korea by its nationals or from its territory, of technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of the items in subparagraphs (a) (i) and (a) (ii) above.

The provisions of paragraph 8 (c) of resolution 1718 (2006) and paragraphs 9 and 10 of resolution 1874 (2009), as they relate to the provision to, and the procurement from, the Democratic People's Republic of Korea of financial transactions and services, are implemented in Australia by regulations 11 and 14C of the Democratic People's Republic of Korea Regulations.

Regulation 11 of the Democratic People's Republic of Korea Regulations prohibits the provision to the Democratic People's Republic of Korea, and the procurement from the Democratic People's Republic of Korea, of financial transactions, technical training, advice, services or assistance related to the supply of arms or related materiel without a permit issued by the Minister for Foreign

Affairs under regulation 14C, or validly issued under the law of another country in compliance with its obligations under resolutions 1718 (2006) and 1874 (2009). Regulation 14C of the Democratic People's Republic of Korea Regulations allows the Minister for Foreign Affairs to issue a permit for the provision to the Democratic People's Republic of Korea only of such services related to the supply to the Democratic People's Republic of Korea of small arms or light weapons. The Minister must not grant a permit unless the supply has itself been authorized in accordance with Regulation 9 (see above).

Regulation 11 of the Democratic People's Republic of Korea Regulations prohibits outright the provision to the Democratic People's Republic of Korea, and the procurement from the Democratic People's Republic of Korea, of technical training, advice, services or assistance if it relates to:

(a) Goods that are mentioned in documents S/2006/814, S/2006/815, S/2006/853, INFCIRC/254/Rev.9/Part 1a, INFCIRC/254/Rev.7/Part 2a; and

(b) Goods that have been determined by the Security Council or the Committee for subparagraphs 8 (a) (i) and (ii) of resolution 1718 (2006).

Paragraph 8 (d) of resolution 1718 (2006)

> All Member States shall, in accordance with their respective legal processes, freeze immediately the funds, other financial assets and economic resources which are on their territories at the date of the adoption of the present resolution or at any time thereafter, that are owned or controlled, directly or indirectly, by the persons or entities designated by the Committee or by the Security Council as being engaged in or providing support for, including through other illicit means, the Democratic People's Republic of Korea's nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes, or by persons or entities acting on their behalf or at their direction, and ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of such persons or entities.

Paragraph 8 (d) of resolution 1718 (2006) is implemented in Australia by regulations 12, 13 and 14 of the Democratic People's Republic of Korea Regulations.

Regulation 12 of the Democratic People's Republic of Korea Regulations prohibits making an asset available, directly or indirectly, to, or for the benefit of, a designated person or entity, or a person or entity acting on behalf of or at the direction of a designated person or entity.

Regulation 13 of the Democratic People's Republic of Korea Regulations prohibits a person who holds a controlled asset from using or dealing with the asset, or allowing the asset to be used or dealt with, of facilitating the use of, or the dealing with, the asset. A controlled asset is an asset that is owned or controlled by a designated person or entity, or a person or entity acting on behalf of or at the direction of a designated person or entity.

For the purposes of the Regulations, "designated person or entity" means a person or entity designated by the Committee or by the Security Council pursuant to

paragraph 8 (d) of resolution 1718. This has the effect of incorporating by reference all persons and entities designated by the Committee on 24 April 2009 and 16 July 2009, as well as in any future decision by the Committee or the Security Council, as being subject to paragraph 8 (d) of resolution 1718 (2006).

Regulation 14 provides that the Minister for Foreign Affairs may, on application, grant a person a permit authorizing the making available of an asset to a person or entity that would otherwise contravene regulation 12, or a use of, or a dealing with, a controlled asset that would otherwise contravene regulation 13, in relation to any of the circumstances permitted by and subject to the conditions set out in paragraph 9 of resolution 1718 (2006).

Penalties for breach of regulations 9, 10, 11, 12 and 13 of the Democratic People's Republic of Korea Regulations

Regulations 9, 10, 11, 12 and 13 have been specified by the Minister for Foreign Affairs as United Nations sanction enforcement laws. Contravention of a United Nations sanction enforcement law, or of a condition of a permit granted under a United Nations sanction enforcement law (such as a permit granted under regulation 14B) is an offence under section 27 of the *Charter of the United Nations Act 1945*. The maximum penalties upon conviction for such an offence are, for individuals, 10 years' imprisonment or a fine the greater of 2,500 penalty units or three times the value of the transaction (if this can be calculated). For a body corporate, the offence is an offence of strict liability unless it can prove that it took reasonable precautions, and exercised due diligence, to avoid contravening the law. The maximum penalty for bodies corporate upon conviction is a fine the greater of 10,000 penalty units or three times the value of the transaction (if this can be calculated). A penalty unit is equivalent to AUS $110 under section 4AA of the Commonwealth *Crimes Act 1914*.

Paragraph 8 (e) of resolution 1718 (2006)

> All Member States shall take the necessary steps to prevent the entry into or transit through their territories of the persons designated by the Committee or by the [Security] Council as being responsible for, including by supporting or promoting, policies of the Democratic People's Republic of Korea in relation to the Democratic People's Republic of Korea's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their family members, provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory.

In accordance with the *Migration (United Nations Security Council) Regulations 2007* (the Migration UNSC Regulations), the Minister for Immigration and Citizenship specifies by legislative instrument United Nations Security Council resolutions applying travel bans to designated persons. The Migration UNSC Regulations provide the basis for a person subject to such measures to be denied a visa, or to have his or her visa cancelled. Resolution 1718 (2006) has been so specified, thus applying the Migration UNSC Regulations to persons designated for the purposes of paragraph 8 (e) of resolution 1718 (2006).

Paragraph 8 (f) of resolution 1718 (2006)

In order to ensure compliance with the requirements of this paragraph, and thereby preventing illicit trafficking in nuclear, chemical or biological weapons, their means of delivery and related materials, all Member States are called upon to take, in accordance with their national authorities and legislation, and consistent with international law, cooperative action, including through inspection of cargo to and from the Democratic People's Republic of Korea, as necessary.

As supplemented by paragraph 11 of resolution 1874 (2009)

Calls upon all States to inspect, in accordance with their national authorities and legislation, and consistent with international law, all cargo to and from the Democratic People's Republic of Korea, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 or by paragraph 9 or 10 of the present resolution, for the purpose of ensuring strict implementation of those provisions.

Australian law enforcement has a broad mandate that can incorporate authority to intercept, search and inspect vessels and goods as called for in resolution 1718 (2006) and paragraph 11 of resolution 1874 (2009). The Australian Customs and Border Protection Service administers the *Customs Act 1901*, the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958*. Regulation 4Y of the *Customs (Prohibited Imports) Regulations 1956* and Regulation 13CO of the *Customs (Prohibited Exports) Regulations 1958* apply the specific sanctions prohibitions applying to goods in relation to the Democratic People's Republic of Korea. Sections 233BABAB and 233BABAC of the *Customs Act 1901* provide for special offences for the breach of these regulations. Maximum penalties for these offences range from 2,500 to 10,000 penalty units, three times the value of the transaction (if this can be calculated) or 10 years' imprisonment.

Customs and Border Protection Officers are empowered to search vessels and aircraft and to inspect cargo within the Australian jurisdiction. Under this legislation, authority to search vessels, aircraft and cargo does not need to be based upon any reasonable grounds to believe that the aircraft or vessel is transporting prohibited goods.

The *Customs Act 1901* requires cargo to be reported to the Australian Customs and Border Protection Service prior to import to and export from Australia. This reporting is done electronically through the Integrated Cargo System. Customs and Border Protection uses the Integrated Cargo System to profile and identify cargo that might be prohibited or of risk. Customs and Border Protection can target, inspect and interdict cargo of concern that might be going to or coming from the Democratic People's Republic of Korea.

Paragraph 18 of resolution 1874 (2009)

Calls upon Member States, in addition to implementing their obligations pursuant to paragraphs 8 (d) and (e) of resolution 1718 (2006), to prevent the

provision of financial services or the transfer to, through or from their territory, or to or by their nationals or entities organized under their laws (including branches abroad), or persons or financial institutions in their territory, of any financial or other assets or resources that could contribute to the Democratic People's Republic of Korea's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programmes or activities, including by freezing any financial or other assets or resources on their territories or that hereafter come within their territories, or that are subject to their jurisdiction or that hereafter become subject to their jurisdiction, that are associated with such programmes or activities and applying enhanced monitoring to prevent all such transactions in accordance with their national authorities and legislation.

Australian law establishes as serious criminal offences any intentional contribution to a ballistic missile-related or other weapons of mass destruction-related programme or activity. These offences include the intentional provision of financial assistance for such a programme or activity (section 4 and section 11 of the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*). The provisions of paragraph 20 of resolution 1874 (2009) have been brought to the attention of agencies responsible for the implementation and enforcement of these laws.

In addition, the Australian Government collects information about the activities of financial institutions based in Australia in connection with financial institutions domiciled in the Democratic People's Republic of Korea and other overseas branches and subsidiaries. Upon request, the Australian Federal Police (AFP) will examine a designated person or entity for any financial activity in relation to the Democratic People's Republic of Korea and advise relevant agencies as required. The Australian Transaction Reports and Analysis Centre (AUSTRAC), Australia's anti-money-laundering and counter-terrorism financing regulator and specialist financial intelligence unit collects all customer-based international funds transfer instructions and may also receive suspicious reports relating to customers of financial institutions who have dealings with the Democratic People's Republic of Korea or who are designated under Security Council sanctions regimes.

AUSTRAC will issue an information circular to industry drawing attention to Security Council resolution 1874 (2009) and its extension of sanctions imposed against the Democratic People's Republic of Korea by resolution 1718 (2006). The circular will remind financial institutions of the need to be aware that other countries may impose sanctions or expand existing sanctions on the Democratic People's Republic of Korea autonomously and that such measures may have implications for Australian financial institutions dealing with the Democratic People's Republic of Korea.

The circular will also remind entities regulated by AUSTRAC to take into account Security Council resolutions and Australian law when considering whether particular transactions should be reported to AUSTRAC as suspicious transactions.

Paragraph 19 of resolution 1874 (2009)

Calls upon all Member States and international financial and credit institutions not to enter into new commitments for grants, financial assistance, or concessional loans to the Democratic People's Republic of Korea, except

for humanitarian and developmental purposes directly addressing the needs of the civilian population, or the promotion of denuclearization, and also calls upon States to exercise enhanced vigilance with a view to reducing current commitments.

The Minister for Foreign Affairs has written to all relevant Ministers drawing their attention, and that of their relevant portfolio agencies, to the terms of paragraph 19 of resolution 1874 (2009).

Paragraph 20 of resolution 1874 (2009)

Calls upon all Member States not to provide public financial support for trade with the Democratic People's Republic of Korea (including the granting of export credits, guarantees or insurance to their nationals or entities involved in such trade) where such financial support could contribute to the Democratic People's Republic of Korea's nuclear-related or ballistic missile-related or other weapons of mass destruction-related programmes or activities.

The Australian Minister for Trade has issued a direction to the Export Finance Insurance Corporation under the *Export Finance Insurance Corporation Act 1991* to exclude trade with the Democratic People's Republic of Korea from financial support available under the Act. Furthermore, the Minister for Trade has declared the Democratic People's Republic of Korea to be a country subject to trade sanctions under the *Export Market Development Grant Act 1997*. This has the effect of excluding trade with the Democratic People's Republic of Korea from financial support available under the Act.